

101-8 must be provided in the format prescribed by GSA.

(g) *Needs and resources.* In order that the State agency in distributing property can give fair and equitable consideration to the relative needs and resources of the donees within the State and their ability to use the property, the State agency may require each applicant, when submitting an application for eligibility determination, to provide a statement on the types and kinds of equipment, vehicles, machines, or other items of property needed by the applicant for use in the applicant's particular public programs, or, in the case of eligible nonprofit tax-exempt activities, the authorized programs to be served by the use of the equipment and the scope of these programs. The State agency may also request any financial information needed to evaluate the relative financial needs and resources of the applicant.

(h) *Maintaining eligibility.* The State agency shall update donee eligibility records as required to ensure continuing eligibility. Records for public agencies and nonprofit tax-exempt donees must be updated on a continuing basis, as frequently as necessary, to ensure that all documentation required to justify the donee's eligibility is current and accurate. Particular care must be taken to ensure that the donee resolution is current and that the statement of designated representatives contained therein is correct. When an eligible donee ceases to operate or when it loses its license, accreditation, or approval or otherwise fails to maintain its eligibility status, the State agency shall terminate its distribution of property to the activity.

(i) *Conditional eligibility.* In certain cases, newly organized activities may not have commenced operations or completed construction of their facilities, or may not yet have been approved, accredited, or licensed as may be required to qualify as eligible donees. In other cases, there may be no specific authority which can approve, accredit, or license the applicant as required for qualification. In these cases, the State agency may accept letters from public authorities, either local or State, which the State agency deems

competent (such as a board of health or a board of education) stating that the applicant otherwise meets the standards prescribed for approved, accredited or licensed institutions and organizations. In the case of educational activities, letters from three accredited or approved institutions that students from the applicant institution have been and are being accepted may be deemed sufficient by the State agency. In the case of public health institutions or organizations, licensing may be accepted by the State agency as evidence of approval in States where there is no authority which can as a legal or as a policy matter, approve hospitals, clinics, health centers, or medical institutions, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution. If the construction of an applicant's facility or physical plant has not been completed, the State agency, after evaluating the progress and potential of the applicant, may at its discretion make available surplus items of property which can be immediately utilized at this point in the applicant's program. Under no circumstances shall conditional eligibility be granted to a potentially eligible nonprofit tax-exempt applicant before the State agency has received from the applicant a copy of a letter of determination by the Internal Revenue Service stating that the applicant is exempt from Federal taxation under section 501 of the Internal Revenue Code of 1954.

[42 FR 56003, Oct. 20, 1977, as amended at 43 FR 38009, Aug. 25, 1978; 45 FR 56809, Aug. 26, 1980; 53 FR 16115, May 5, 1988; 53 FR 47197, Nov. 22, 1988; 58 FR 39666, July 26, 1993]

**§ 101-44.208 Property distributed to donees.**

(a) *Distribution document.* Donation of surplus personal property shall be accomplished by the use of a prenumbered State agency distribution document which shall include the:

(1) Certifications and agreements required of the donee by the State agency, including an agreement to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the

donation of the property, its use, or final disposition;

(2) Condition that the donee will return to the State agency, at its own expense, any donated property that is not placed in use for the purposes for which it was donated within 1 year of donation, or which ceases to be used by the donee for those purposes within 1 year of being placed in use, provided the property is still usable as determined by the State agency or the donee agrees to make the property available for retransfer or other disposal by the State agency;

(3) Terms, conditions, reservations, and restrictions, imposed by the State agency as provided in the State plan of operation on the use of any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle;

(4) Terms, conditions, reservations, or restrictions imposed on any other donated item by the State agency;

(5) Conditions imposed by GSA, if any, requiring special handling or use limitations on donated property; and

(6) Period of restriction during which the donee must use the property for the purpose for which it was acquired.

(b) *Donation purpose.* At the time donable surplus property is acquired by a donee, the donee's authorized representative shall indicate on the State agency's distribution document the primary purpose for which the property is to be used. In the case of public agencies, such usage could be for public purposes, such as conservation, economic development, education, parks and recreation, public health, programs for providing assistance to homeless individuals, public safety, museums, State Indians, or programs for older individuals. When the property is to be used for a combination of these purposes or for some other public purpose, the distribution document shall so indicate. With respect to nonprofit institutions or organizations, the purpose shall be shown as education, public health, programs for providing assistance to homeless individuals, museums, or programs for older individuals.

(c) *Conditional title.* Conditional title to surplus personal property shall pass to an eligible donee when the donee has executed the State agency distribution

document and taken possession of the property.

(d) *Utilization surveys.* The State agency shall make utilization surveys and reviews, as provided in the State plan of operation, to ensure that donated property during the period of restriction is being used by the donee for the purposes for which it was acquired.

(e) *Compliance.* The State agency shall take the necessary action to correct any noncompliance involving the use of donated property or to enforce the terms, conditions, reservations, and restrictions imposed on the use of the property, either by the State agency or GSA. Noncompliance may involve but not be limited to:

(1) Property not placed in use by the donee;

(2) Property no longer needed by the donee within the period of restriction;

(3) Unauthorized use of property by the donee during the period of restriction; or

(4) Unauthorized disposal of property by the donee during the period of restriction.

(f) *Enforcement of compliance.* Enforcement of compliance during the period of restriction may involve action by the State agency to:

(1) Place the property in proper use by the donee;

(2) Transfer the property to another donee having need and use therefor;

(3) Return the property to the State agency for distribution to other donees in the State or to another State agency having need and use therefor;

(4) Transfer the property through GSA to a Federal agency;

(5) Sell the property;

(6) Recover the gross proceeds realized from the disposal or the fair market value of the property, whichever is greater, when it is impossible or impracticable to recover property disposed of improperly during the period of restriction; and

(7) Recover the fair rental value if the property was used in an unauthorized manner during the period of restriction.

(g) *Coordination with GSA.* In enforcing compliance with the terms and conditions imposed on donated property, the State agency shall coordinate with GSA before undertaking the sale of, or

making demand for payment of the fair market value or fair rental value of donated property which:

(1) Is subject to any special handling condition or use limitation imposed by GSA or

(2) Has not been placed into use by the donee, for the purposes for which acquired, within 1 year of donation, or which has not been used for these purposes for 1 year after being placed in use.

(h) *Waivers.* A State agency may amend, modify, or grant releases for appropriate reasons from the terms, conditions, reservations, or restrictions it has imposed on the use of donated property, provided that it has set forth in the State plan of operation the standards by which actions shall be taken by the State agency. Amendments, corrections, or releases shall not be granted by the State agency, however, with respect to:

(1) The requirement that usable property be returned by the donee to the State agency if the property has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for those purposes within 1 year of being placed in use; except that the State agency may grant authority to the donee to cannibalize or accomplish secondary utilization of property items subject to this requirement when the State agency determines that such action will result in increased utilization of the property and that the proposed action meets the standards prescribed in the State plan of operation with respect to amendments, modifications, or releases of the terms and conditions imposed on donated property; or

(2) Any special handling condition or use limitation imposed by GSA except with the prior approval of GSA.

(i) *Disposition of recovered property.* Personal property items returned to a State agency by a donee shall be redistributed by the State agency to other donees in the State or otherwise transferred or disposed of in accordance with the provisions of the State plan of operation if the property was returned (1) while subject to any special handling condition or use limitation imposed by GSA or (2) because the property had not been placed in use within 1 year of

donation for the purposes for which it was acquired, or not used for such purposes for 1 year after being placed in use. Personal property items returned by a donee while subject to terms, conditions, reservations, or restrictions imposed by the State agency may be redistributed, transferred, or disposed of as determined by the State agency.

(j) *Deposit of funds.* Any funds, including the gross proceeds of sale or the fair market value or the fair rental value of the property, derived by the State agency from enforcement of compliance involving a breach of any special handling condition or use limitation imposed on donated property by GSA, or involving donated property which had not been placed in use for the purposes for which it was acquired within 1 year of donation or not used for those purposes for 1 year after being placed in use by the donee, shall be remitted promptly by the State agency to GSA for deposit in the Treasury of the United States. The remittance shall be accompanied by supporting documentation indicating the source of the funds and essential background information. Funds derived by the State agency from the compliance action involving any term, condition, reservation, or restriction imposed on the donee by the State agency and funds derived by the State agency from any amendment, modification, or release thereof during the period of restriction may be retained and used by the State agency as provided in its plan of operation.

(k) *Reimbursement to donees.* (1) When a donee has used but no longer has a need or use for donated property which is subject to any special handling condition or use limitation imposed by GSA, and no breach of the conditions or limitations has occurred, the donee may be reimbursed on a prorated basis for the initial cost of repairs required to make the item usable when the property is transferred to a Federal agency or sold for the benefit and account of the United States of America.

(2) The State agency shall recommend for GSA approval the amount of reimbursement to which the donee is entitled, taking into consideration the benefit the donee has received from the

use of the property and making appropriate deductions therefor. In the case of sale, reimbursement to a donee for any item of property shall not exceed the proceeds of the sale of the item. Reimbursement for property to be transferred to a Federal agency will be made a condition of the transfer by GSA.

[42 FR 56003, Oct. 20, 1977, as amended at 45 FR 56810, Aug. 26, 1980; 53 FR 16116, May 5, 1988; 53 FR 47198, Nov. 22, 1988]

### **Subpart 101-44.3—Donations of Foreign Excess Personal Property**

#### **§ 101-44.300 Scope of subpart.**

This subpart prescribes the policies and methods governing the return of foreign excess personal property to the United States for donation.

#### **§ 101-44.301 Holding agency responsibilities.**

Prior to any sale, exchange, lease, or donation of medical materials or supplies pursuant to the provisions of section 402 (a) or (b) of the Federal Property and Administrative Services Act of 1949, as amended, foreign excess personal property not required for further Federal use as determined by GSA shall be made available by the holding agency for selection and return to the United States for donation for the purposes of subpart 101-44.2 and, with respect to property returned from Department of Defense (DOD) activities, for the purposes of subpart 101-44.4. Any foreign excess personal property returned to the United States which has been identified as having been processed, produced, or donated by the American National Red Cross shall be made available for donation to the American National Red Cross for charitable purposes in accordance with subpart 101-44.6, unless otherwise directed by the Administrator of General Services.

#### **§ 101-44.302 Donation screening.**

(a) To locate and select donable property, onsite representatives of State agencies duly accredited by GSA shall be permitted to screen foreign excess personal property available for return

to the United States. Property not required for further Federal use, as determined by GSA, shall be available for donation for a period of time of not less than 10 calendar days unless otherwise agreed to by the holding agency and GSA. To assist donation screening, GSA will provide State agency representatives with available advance information concerning foreign excess property to the maximum extent possible.

(b) Property returned to the United States for further Federal use and thereafter determined surplus shall be made available for donation by GSA for the purposes set forth in subpart 101-44.2 and, with respect to property returned from DOD activities and then determined surplus, for donation by GSA without priority for the purposes of subpart 101-44.4.

#### **§ 101-44.303 Donation approval.**

(a) The Administrator of General Services is authorized to make donations at his discretion for the purposes of this subpart.

(b) Standard Form (SF) 123, Transfer Order Surplus Personal Property (see § 101-44.4901-123), prepared in accordance with instructions (see § 101-44.4901-123-1) and signed by a duly authorized official, shall be forwarded to the appropriate GSA office for approval for property covered by this subpart. An information copy shall be forwarded to the holding activity.

(c) Unless otherwise authorized by GSA, personal property shall not be released by the holding agency for donation pursuant to this subpart until it has received SF 123 bearing the signed approval of the appropriate GSA office.

#### **§ 101-44.304 Shipment.**

The State agency representatives shall arrange for the shipment of personal property approved for donation and allocated by GSA to State agencies for distribution to eligible donees. Upon request, the holding agency may provide packing, handling, crating, and transportation services on a reimbursable basis.